

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 1:17-cr-0062-RLY-DML
	)	
DAVID MCGHEE,	)	
	)	- 03
Defendant.	)	

**REPORT AND RECOMMENDATION**

On October 13, 2021, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on September 21, 2021. Defendant McGhee appeared in person with his appointed counsel Dominic Martin. The government appeared by Bradley Shepard, Assistant United States Attorney. U. S. Probation appeared by Officer Angela Smith.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant McGhee of his rights and provided him with a copy of the petition. Defendant McGhee orally waived his right to a preliminary hearing.

2. After being placed under oath, Defendant admitted violation numbers 1, and 2.  
[Docket No. 343.]

3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation  
Number**

**Nature of Noncompliance**

- 1        **“The defendant shall not unlawfully possess a controlled substances. The defendant shall refrain from any unlawful use of a controlled substance.”**

Mr. McGhee submitted urinalysis' that returned positive for cannabinoids on April 14, 2020, March 10, and March 25, 2021. He also submitted a positive urinalysis for cannabinoids that was also diluted on September 15, 2021.

- 2        **“You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. You shall not attempt to obstruct or tamper with he methods of testing.”**

On July 28, 2021, Mr. McGhee submitted a urinalysis that was diluted. He also submitted a diluted specimen on September 15, 2021, that also return positive for cannabinoids.

4.        The parties stipulated that:

- (a)        The highest grade of violation is a Grade C violation.
- (b)        Defendant’s criminal history category is I.
- (c)        The range of imprisonment applicable upon revocation of supervised release, therefore, is 3 to 9 months’ imprisonment.

5.        The government recommended a sentence of six (6) months with twelve (12) months of supervised release to follow. Defendant's counsel argued for a sentence of three (3) months.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of three (3) months with twelve (12) months of

supervised release to follow. In addition to the mandatory conditions of supervision, the following conditions of supervised release will be imposed:

1. You shall report to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons.
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.
4. You shall not knowingly leave the judicial district without the permission of the court or probation officer.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in residence occupants, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and

shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement.

13. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.

Justification: Conditions 1-13 are considered administrative in nature and will enable the probation officer to effectively supervise the offender within the community.

14. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage.
15. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.
16. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

Justification: Conditions 14-16 are recommended given the offender's history of substance abuse and non-compliance with drug use while on supervised release. This condition will assist in monitoring his sobriety and assist in provided substance abuse services if necessary.

17. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.  
Justification: This condition is recommended given the offender's criminal conviction for a crime of violence, as well as his use and possession of marijuana during his supervised release period. This will assist in monitoring his compliance on supervision and add a measure of protection for the community.

18. You shall participate in a cognitive behavioral program, such as Moral Reconciliation Therapy (MRT), at the direction of the probation officer and abide by the rules of the program.

Justification: This condition is recommended given the offender's violation of societal rules and his skewed thinking.

20. You shall provide the probation officer access to any requested financial information and shall authorize the release of that information to the U.S. Attorney's Office for use in connection with the collection of any outstanding fines and/or restitution.

Justification: Mr. McGhee owes outstanding restitution. Tracking of his finances will ensure appropriate repayment of the outstanding restitution.

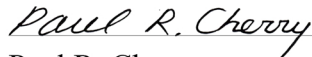
USPO requested Condition 19 be excluded and the Court granted the same. Defendant reviewed the foregoing conditions and they were reviewed by defendant with his attorney.

Defendant, on the record, waived reading of the above-noted conditions of supervised release.

The Defendant is to self-surrender upon designation by the Bureau of Prisons.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Date: 10/13/2021

  
Paul R. Cherry  
United States Magistrate Judge  
Southern District of Indiana

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